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No. 07-542

In the Supreme Court of the United States

STATE OF ARIZONA, PETITIONER

v.

RODNEY JOSEPH GANT

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

PAUL D. CLEMENT
Solicitor General
Counsel of Record
ALICE S. FISHER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
ANTHONY A. YANG
Assistant to the Solicitor General
JOSEPH F. PALMER
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Does the Fourth Amendment require law enforcement officers to demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured?

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INTEREST OF THE UNITED STATES

This case presents the question whether law enforcement officers must demonstrate a threat to their safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless search of a car incident to arrest, after the car's recent occupants have been arrested and secured. The resolution of that question will affect the practices of federal law enforcement officers in the commonly recurring situation in which the recent occupant of a vehicle is arrested. In addition, it will affect the admissibility in federal prosecutions of evidence obtained by federal, state, or local law enforcement agents as the result of the search of an automobile incident to the lawful arrest of an individual who has recently occupied the vehicle. The United States therefore has a substantial interest in this case, and indeed

has participated in previous cases presenting this issue. See, *e.g.*, *Thornton* v. *United States*, 541 U.S. 615 (2004); *New York* v. *Belton*, 453 U.S. 454 (1981).

STATEMENT

1. On August 25, 1999, two Tucson, Arizona, police officers responded to a report of possible drug activity at a residence. Respondent answered the door, identified himself, and told the officers that the homeowner would return later that day. The officers left. They subsequently ran a records check on respondent and discovered that his driver's license was suspended and that he had an outstanding arrest warrant for driving on a suspended license. J.A. 151-152.

The officers returned to the house that night. They encountered a man outside the house and, soon thereafter, made contact with a woman sitting in a parked car. After speaking with those individuals, the officers arrested the woman for possession of a crack pipe and the man for providing a false name to the officers. Both were handcuffed and placed in locked patrol cars. J.A. 145, 152; Pet. App. B5; see J.A. 48-50, 60, 81, 108.

As officers placed the two individuals into patrol cars, respondent returned to the scene driving a car. Respondent entered the driveway for the residence, passing within a few feet of an officer, who shined his flashlight into the passenger compartment and recognized respondent from earlier in the day. That officer immediately summoned respondent as he got out of his car and, after respondent walked approximately 8-12 feet to meet the officer, placed respondent under arrest for the outstanding warrant and for driving with a suspended license. The officer handcuffed respondent and placed him in a locked patrol car, where respondent remained

under the supervision of that officer. By that time, a total of four or five officers were at the scene. While officers had been told that the homeowner might return, the homeowner had yet to appear. J.A. 145-146, 148-149, 152; Pet. App. B5, B9 n.4; see J.A. 51-58, 61, 71-72, 77-79, 100, 114, 119.

Two officers immediately searched the passenger compartment of respondent's car and discovered a handgun and a baggie containing cocaine. After the search was completed, respondent's vehicle was towed to a police station and impounded. Respondent was charged with one count of possessing narcotics for sale and one count of possessing drug paraphernalia. J.A. 152; see J.A. 61-63, 70, 98, 129.

2. Respondent moved to suppress the evidence found in his vehicle, but the Arizona Superior Court denied his pretrial motion. J.A. 37-39, 43. A jury subsequently found respondent guilty on both counts and, in October 2000, the court imposed a three-year sentence of imprisonment. Pet. App. B4; J.A. 2. The Arizona Court of Appeals reversed respondent's convictions, holding that his suppression motion should have been granted because the police did not make contact with respondent until after he had exited his vehicle. *State* v. *Gant*, 43 P.3d 188, 194 (Ariz. App. 2002). The Arizona Supreme Court denied review, J.A. 153, and this Court granted the State's petition for a writ of certiorari. *Arizona* v. *Gant*, 538 U.S. 976 (2003).

The Arizona Supreme Court subsequently decided *State* v. *Dean*, 76 P.3d 429 (Ariz. 2003), which abrogated the rule adopted by the court of appeals in this case, concluding that the police may search a car incident to arrest even if they initiate contact with the arrestee after he has exited the vehicle. See *id.* at 434-437 (discuss-

ing *Gant*, 43 P.3d 188). This Court accordingly vacated the judgment of the Arizona Court of Appeals in this case and remanded for reconsideration in light of *Dean*. *Arizona* v. *Gant*, 540 U.S. 963 (2003).

Because the trial court had addressed the search of respondent's car based on stipulated facts rather than testimony, the court of appeals remanded for an evidentiary hearing. Pet. App. B4-B5. After conducting hearings, J.A. 44-142, the trial court again upheld the search. J.A. 143-149. The court concluded that the search was incident to respondent's arrest because the police arrested him seconds after he got out of the car and searched his car immediately after that arrest. J.A. 148-149.

Respondent again appealed to the Arizona Court of Appeals, which reversed in a divided opinion. Pet. App. B1-B23. The majority held that the search of respondent's vehicle violated the Fourth Amendment because it was not contemporaneous with respondent's arrest and did not satisfy the rationale for a search incident to arrest under *Chimel* v. *California*, 395 U.S. 752 (1969). Pet. App. B14-B15; see J.A. 153.

3. The Arizona Supreme Court granted the State's petition for review and, in a 3-2 decision, affirmed the judgment of the court of appeals while vacating its opinion. J.A. 154, 166-167. The majority held that the search of respondent's car violated the Fourth Amendment because it was not justified by the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement. J.A. 166. The court explained that this Court in *Chimel* justified that exception based on the twin "rationales of officer safety and preservation of evidence," and that *Chimel* therefore limited the scope of a search incident to arrest to the suspect's person and

"the area 'within his immediate control,'" that is, the "area from within which he might gain possession of a weapon or destructible evidence." J.A. 155 (quoting *Chimel*, 395 U.S. at 763).

In the court's view, this Court's subsequent decision in *New York* v. *Belton*, 453 U.S. 454 (1981), merely defined the "permissible scope" of an "otherwise lawful search of an automobile incident to arrest." J.A. 156. On that view, *Belton* established only a bright-line rule that the area within the arrestee's immediate control will include the vehicle's passenger compartment and the containers within that compartment. *Ibid.* The majority concluded that *Belton* did not address "the threshold question whether the police may conduct a search incident to arrest at all." J.A. 156-157. The court answered that question by holding that, under *Chimel*, such a search must be supported on a case-by-case basis by "determin[ing] whether officer safety or the preservation of evidence" actually justified the search. *Ibid.* The court concluded that a search cannot be justified if the "totality of the circumstances" indicates that "an arrestee is secured and thus presents no reasonable risk to officer safety or the preservation of evidence." J.A. 165-166.

Applying that test, the court held that the search of respondent's car was unjustified because it was not "necessary to protect the officers at the scene or prevent the destruction of evidence." J.A. 160. It emphasized that, when the search began, respondent and the other two arrestees at the scene were handcuffed and placed in the back of locked patrol cars; at least four officers were present, including one officer supervising respondent; and no unsecured civilians had been identified in the vicinity. J.A. 157. Under those circumstances, the

court concluded that "the police had no reason to believe" that their safety was at risk or that anyone could gain access to respondent's vehicle. *Ibid.* The court accordingly held that the search was not a lawful search incident to arrest because neither *Chimel* rationale specifically applied to this case. *Ibid.*

The court acknowledged that it was "possible" to interpret *Belton*'s bright-line rule as dispensing with the need for the police to "assess the exigencies" surrounding each custodial arrest. J.A. 158. It likewise recognized that, in *Thornton* v. *United States*, 541 U.S. 615 (2004), this Court upheld a search on facts that "resemble" the facts in this case, J.A. 160-162, and that "most other courts * * * have found *Belton* and *Thornton* dispositive of the question whether a search like the one at issue was incident to arrest." J.A. 162. The majority nevertheless believed that neither *Belton* nor *Thornton* addressed the "precise question" whether a vehicle search is incident to arrest if the *Chimel* justifications "no longer exist at the time of the search." J.A. 163.

Two justices dissented. J.A. 167-176. They concluded that the majority opinion conflicted with *Belton*'s bright-line rule, which neither depended on a "case-specific determination that there may be weapons or evidence in the automobile" nor required that the "presence of the *Chimel* rationales" be established in every case. J.A. 169-170. The dissenters noted that the New York state-court decision that *Belton* reversed and Justice Brennan's dissent in *Belton* both advanced the very argument that the majority had adopted, and that *Belton* had rejected it. J.A. 170-172. In addition, they concluded that the majority's case-by-case approach requiring the demonstrated presence of the *Chimel* rationales for every arrest conflicted with *Belton*'s intent

to establish a "straightforward rule" that would guide officers in the field and avoid after-the-fact, "case-by-case adjudication" of the risk to officers or evidence. J.A. 173-174.

SUMMARY OF ARGUMENT

In *Belton*, this Court adopted a bright-line rule to guide the officer in the field when the recent occupant of a vehicle is arrested: the officer may search the passenger compartment of the vehicle that the arrestee recently occupied as a contemporaneous incident of a lawful custodial arrest. The Arizona Supreme Court's decision in this case effectively overturns the *Belton* rule by converting it into a totality of the circumstances inquiry that asks whether, on the facts of a particular case, a search was necessary to protect officer safety or to preserve evidence. That case-specific approach provides officers with little practical guidance and should be rejected.

This Court's search-incident-to-arrest doctrine rests on the general need to protect officers from potential harm and to preserve evidence "whenever officers effect a custodial arrest" of the recent occupant of a vehicle. *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983). A custodial arrest is a volatile and dangerous event, with heightened risks that a suspect will grab for a weapon or attempt to conceal or destroy evidence of his guilt. This Court has thus long held that a search incident to arrest is per se reasonable regardless of whether the circumstances of the particular case involve one of the twin rationales for such a search. See *United States* v. *Robinson*, 414 U.S. 218, 235 (1973). Both *Belton* and *Thornton* reaffirmed that principle. Indeed, the Court in *Thornton* upheld a vehicle search that was conducted

after the defendant was handcuffed and secured in a patrol car. The Arizona Supreme Court's rule requiring a showing that each particular case involved a threat to officer safety or a risk of evidence destruction directly conflicts with more than three decades of this Court's precedents.

Under *Belton* and *Thornton*, the search of respondent's vehicle was valid. Respondent was a "recent occupant" of the car, he was subjected to a "lawful custodial arrest" next to the car, and the search of respondent's car was conducted as "a contemporaneous incident of that arrest." *Belton*, 453 U.S. at 460. Moments after respondent exited his vehicle, the police arrested him and promptly searched that vehicle in one continuous process.

The Arizona Supreme Court's decision eliminates the bright line drawn by *Belton* and incorrectly replaces it with an ad hoc, case-by-case approach that *Belton* itself found to be unworkable. *Belton* specifically recognized that it was "essential" to provide officers in the field with a "single familiar standard" for determining when the search of a car is authorized incident to an arrest. 453 U.S. at 458 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979)). The Arizona Supreme Court's decision undermines that important objective by transforming a bright-line rule into a totality-of-the-circumstances test for determining whether a threat to officer safety or a need to preserve evidence in any particular case sufficiently justifies each search. J.A. 165-166. That inquiry accordingly reintroduces the very uncertainty and line-drawing difficulties that this Court sought to eliminate in *Belton*.

Belton has built-in limitations that have proved to be clear and workable. *Belton* applies only in the case of

the lawful arrest of a vehicle's "recent occupant" and only with respect to vehicle searches conducted as a "contemporaneous incident" to such an arrest. 453 U.S. at 460. A further narrowing of *Belton* to cases in which the police reasonably believe that evidence of the crime of arrest will be found in the vehicle makes little sense. Not only is such a recharacterization inconsistent with the Court's reasoning in *Belton*, it would disregard the officer-safety considerations that support *Belton*'s bright-line rule. It would also effectively render *Belton* superfluous because the automobile exception to the warrant requirement already authorizes vehicle searches based on probable cause. Indeed, imposing such a limitation on *Belton* would create irreconcilable tension with *Belton*'s existing limitations, which were developed consistent with *Belton*'s original rationale. Accordingly, the Court should reaffirm *Belton*'s bright-line rule authorizing a search of a vehicle's passenger compartment as a contemporaneous incident to the arrest of the vehicle's recent occupant.

ARGUMENT

A SEARCH OF A VEHICLE INCIDENT TO THE LAWFUL CUSTODIAL ARREST OF THE VEHICLE'S RECENT OCCUPANT IS LAWFUL EVEN WHEN THE ARRESTEE IS SECURED IN A PATROL CAR AT THE TIME OF THE SEARCH

A. *Belton* Authorizes The Warrantless Search Of A Vehicle's Passenger Compartment Where The Search Is A Contemporaneous Incident Of The Lawful Custodial Arrest Of The Vehicle's Recent Occupant

1. The Fourth Amendment to the Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against un-

reasonable searches and seizures, shall not be violated," and further provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This Court has long recognized that when officers have made a lawful arrest, a search of the person of the arrestee and area within his control "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973); see *Weeks* v. *United States*, 232 U.S. 383, 392 (1914).

Two longstanding rationales support the search-incident-to-arrest doctrine: the need "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and the need to prevent the "concealment or destruction" of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); see *Knowles* v. *Iowa*, 525 U.S. 113, 116-117 (1998) (citing cases). Both rationales address practical difficulties generally associated with custodial arrests. Indeed, this Court has repeatedly recognized that custodial arrests are highly volatile and dangerous events. See, *e.g.*, *id.* at 117; *Robinson*, 414 U.S. at 234-235 & n.5. In 2006 alone, 9233 law enforcement officers were assaulted and 12 of the 48 officers feloniously killed in the line of duty were mortally wounded *while attempting arrests*. FBI, U.S. Dep't of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted*, Tables 19, 66 (2006) <http://www.fbi.gov/ucr/killed/2006/index.html> (*Uniform Crime Reports*); see FBI, U.S. Dep't of Justice, *Killed in the Line of Duty: A Study of Felonious Killings of Law Enforcement Officers* 3 (Sept. 1992). That is consistent with a well-established and dangerous pattern. Between 1997 and 2006, 133 of the 562 law enforcement officers who were feloniously killed in the line

of duty were slain in arrest situations, making the arrest by far the most dangerous situation that officers routinely confronted in that period. *Uniform Crime Reports* Table 19. In addition, the moment that an individual is placed under formal arrest, he has an increased motive "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp* v. *Murphy*, 412 U.S. 291, 296 (1973).

This Court accordingly has recognized that, "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel*, 395 U.S. at 762-763. Further, the officer's need to protect himself and to preserve evidence justifies a search of the area within the arrestee's "immediate control," which the Court has described as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence." *Id*. at 763.

Because "potential dangers lurk[] in all custodial arrests," *United States* v. *Chadwick*, 433 U.S. 1, 14-15 (1977), the validity of a search incident to arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. Instead, "[i]t is the fact of the lawful arrest which establishes the authority to search." *Ibid*.

2. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court applied those principles to define the permissible scope of a search incident to the arrest of the occupant of an automobile. *Belton* arose when a state trooper stopped a car for speeding and thereafter developed

probable cause to arrest the occupants for possession of marijuana. The officer ordered the occupants out of the car and placed them under arrest. *Id.* at 455-456. After "patt[ing] down" the arrestees and separating them, the officer searched the passenger compartment of the car and discovered cocaine. *Id.* at 456. The state courts suppressed that evidence on the ground that, when the search took place, "there [was] no longer any danger that the arrestee or a confederate might gain access to the article." *Ibid.* This Court reversed. *Id.* at 463.

The Court began by noting the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area" from "within which [an arrestee] might gain possession of a weapon or destructible evidence." *Belton*, 453 U.S. at 457-458. The Court then explained that courts had struggled in applying that doctrine to the recurring question presented in *Belton*, namely, "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile after the arrestees are no longer in it." *Id.* at 459. As the Court recognized, the lower courts were in "disarray" on that issue and had "found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 459-460 & n.1 (citation omitted).

The Court concluded that a "single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Belton*, 453 U.S. at 458 (citation omitted). "[T]o establish the workable rule [that]

this category of cases requires," the Court adopted "the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). Based on that generalization, the Court held that whenever "a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnotes omitted).

The *Belton* Court emphasized that this rule, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." 453 U.S. at 461 (quoting *Robinson*, 414 U.S. at 235). In fact, it specifically recognized that the search could extend to containers that "could hold neither a weapon nor evidence of the criminal conduct for which the suspect was arrested." *Ibid.* Just as is true with respect to the search of the person of the arrestee, if the arrest is lawful, then the "search [of the vehicle] incident to the arrest requires no additional justification." *Ibid.* (quoting *Robinson*, 414 U.S. at 235). In subsequent cases, this Court has specifically recognized the "bright-line" nature of *Belton*'s search-incident-to-arrest rule. See *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001); *Long*, 463 U.S. at 1035 n.1, 1049 n.14 (1983).

3. In *Thornton* v. *United States*, 541 U.S. 615 (2004), the Court recently reaffirmed *Belton*'s bright-line rule in a factual context closely paralleling the present case. The officer in *Thornton* made contact with Thornton

immediately after he exited his car, noticed a bulge in Thornton's pocket, and asked Thornton whether he was carrying narcotics. *Id.* at 618. Thornton confessed that he was, and he pulled marijuana and crack cocaine out of his pockets. *Ibid.* The officer arrested him, handcuffed him, secured him in a patrol car, and subsequently searched Thornton's vehicle, where he found a handgun. *Ibid.*

The Court upheld the search, confirming that *Belton* established a "clear," "bright-line" rule that authorizes the search of a vehicle's passenger compartment incident to arrest "[s]o long as an arrestee is the sort of 'recent occupant' of the vehicle as [Thornton] was." *Thornton*, 541 U.S. at 623-624 & n.3. The Court recognized that it was "unlikely in this case" that the handcuffed arrestee could have returned to the passenger compartment and grabbed his gun, but concluded that "the firearm and the passenger compartment in general were no more inaccessible than were the contraband and the passenger compartment in *Belton*." *Id.* at 622. The Court emphasized that "[e]xperience has shown" the need for a "clear rule, readily understood by police officers" in the field that does "not depend[] on differing estimates of what items were or were not within reach of an arrestee at any particular moment." *Id.* at 622-623. The Court accordingly ruled that "[o]nce an officer determines that there is probable cause to make an arrest, it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment." *Id.* at 623.

4. These precedents demonstrate that the search of respondent's vehicle was valid. Indeed, the relevant facts in this case are virtually indistinguishable from those surrounding the search upheld in *Thornton*.

There is no doubt that respondent was a recent occupant of his vehicle, because the police contacted him immediately after he got out of his car, when he was still within 8-12 feet of it. J.A. 152. It is also clear that the search was a "contemporaneous incident" of respondent's lawful arrest. The arrest and search were a single, uninterrupted, and rapid transaction of events. "Within minutes" of making contact with respondent, the officers had arrested him, handcuffed him, and placed him in the patrol car, and the search began immediately thereafter. *Ibid.*

Respondent contends (Br. in Opp. 16-19) that the search was not substantially contemporaneous with respondent's arrest, despite the facts that the search was performed within six minutes of the arrest and respondent remained on the scene throughout the search, because the scene was secure and the arrest was complete. According to this argument, the question whether a search is incident to an arrest depends not on whether the arrest and search are contemporaneous as a matter of time and space but rather on the relative security of the arrest scene.

This Court, however, has traditionally analyzed this question primarily along the dimensions of time and space, factors that are much more susceptible to objective measurement than "relative security." See, *e.g.*, *Chadwick*, 433 U.S. at 15 (search conducted long after defendant was taken into custody was not incident to arrest); *Preston* v. *United States*, 376 U.S. 364, 367 (1964) (search cannot be incident to arrest if it is remote in time from the arrest). The test for whether a search is contemporaneous with an arrest thus does not turn on whether the arrest scene is sufficiently secure at the time of the search, but on whether "the arrest and

search are so separated in time or by intervening events that the latter cannot fairly be said to have been incident to the former." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996). Thus, a search is incident to an arrest so long as it is "roughly contemporaneous with the arrest," which means that the search is "conducted within a 'reasonable time' after obtaining control of the vehicle," and occurs "during a continuous sequence of events." *United States* v. *Hrasky*, 453 F.3d 1099, 1101-1102 (8th Cir. 2006) (upholding search conducted an hour after initial detention because the search was contemporaneous with decision to effect a full custodial arrest) (citations omitted), cert. denied, 127 S. Ct. 2098 (2007); see *United States* v. *Mapp*, 476 F.3d 1012, 1019 (D.C. Cir.) (search occurring approximately ten minutes after arrest was sufficiently contemporaneous), cert. denied, 127 S. Ct. 3031 (2007); *United States* v. *Weaver*, 433 F.3d 1104, 1106-1107 (9th Cir.) (upholding search initiated 10-15 minutes after arrestee was placed in patrol car), cert. denied, 547 U.S. 1142 (2006). That standard is amply satisfied here.

B. The Arizona Supreme Court's "Totality Of The Circumstances" Test Conflicts With This Court's Precedents

The Arizona Supreme Court incorrectly abandoned *Belton*'s bright-line rule and replaced it with an ad hoc test that will require case-by-case adjudication. That analysis would interject substantial and undesirable uncertainty into a commonly recurring factual context confronted by officers in the field. The court held that a *Belton* search of a vehicle's passenger compartment is not authorized where, "based on the totality of the circumstances, an arrestee is secured" and thus, in a court's judgment, "presents no reasonable risk to officer

safety or the preservation of evidence." J.A. 165-166. This case-by-case approach based on the "totality of the circumstances" cannot be squared with more than three decades of this Court's precedents, as well as the overwhelming weight of lower-court authority, which make clear that *Belton*'s applicability does not turn on whether the *Chimel* rationales were present in any particular case.

1. In *Robinson*, this Court held that a search incident to arrest of an arrestee's person is per se reasonable and, accordingly, permissible under the Fourth Amendment, regardless whether the circumstances of the particular case involve one of the twin rationales for such a search as a general matter. 414 U.S. at 235. The Court rejected the contention that "there must be litigated in each case the issue of whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest" and explained that such authority "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Ibid.*

Belton itself applied that principle to vehicle searches that are a contemporaneous incident of the lawful custodial arrest of a "recent occupant" of the vehicle. 453 U.S. at 459-460. In doing so, the Court rejected the proposition—advanced by the state court in *Belton* and the dissenters in that case—that "[w]hen the arrest has been consummated and the arrestee safely taken into custody, the justifications [for a warrantless search] cease to apply," because "at that point there is no possibility that the arrestee could reach weapons or contraband." *Id.* at 465-466 (Brennan, J., dissenting); see *id.* at 456 (discussing state-court decision invalidating

search because there was "no longer any danger" that arrestee could access article). As Justice Brennan specifically emphasized in his dissenting opinion, *Belton*'s rationale squarely applies even after a recent occupant has been handcuffed and put in a patrol car. See *id.* at 468; see also *United States* v. *Wesley*, 293 F.3d 541, 548 (D.C. Cir. 2002).

Indeed, *Belton* illustrated the need for a "straightforward rule" by citing the different results previously reached in "comparable factual circumstances" by lower courts "decid[ing] whether * * * police may search inside the automobile after the arrestees are no longer in it." 453 U.S. at 459 & n.1 (citing, *e.g.*, *Hinkel* v. *Anchorage*, 618 P.2d 1069, 1069-1070 (Alaska 1980), cert. denied, 450 U.S. 1032 (1981), and *Ulesky* v. *State*, 379 So. 2d 121, 123 (Fla. Dist. Ct. App. 1979)). Both *Hinkel* and *Ulesky* involved situations in which the arrestee was in the back of the patrol car at the time that the vehicle was searched. The state court in *Hinkel* upheld the search of a purse retrieved from the vehicle as incident to the arrest. 618 P.2d at 1071-1072. The state court in *Ulesky*, by contrast, reasoned that, under the logic of *Chimel*, "once appellant was placed in the patrol car and thereby separated from her purse [in the vehicle], neither of the justifications for the search incident to arrest exception were present." 379 So. 2d at 126. While such reasoning would be consistent with a case-specific application of *Chimel*'s officer-safety and evidence-preservation rationales, it was precisely the uncertainty created by such case-by-case adjudication that *Belton* sought to displace by establishing a "workable rule" that would provide a "single familiar standard" in this critical and recurring context. *Id.* at 458, 460.

If there were any doubt about the bright-line nature of *Belton*'s holding, this Court's decision in *Thornton* should have removed it. The petitioner in *Thornton*, who had been handcuffed and placed in a patrol car before his vehicle was searched, argued that the search was invalid in part because, on the particular facts of his case, he could not have readily accessed the passenger compartment of his car. 541 U.S. at 618, 622. In response, the Court noted that the passenger compartment and contraband in *Belton* itself were "no more inaccessible" and that *Belton* was not based on a case-by-case assessment of the chance that an arrestee might retrieve a weapon from his car. *Id*. at 622-623. Rather, the Court explained, the danger, stress, and uncertainty arising from custodial arrests in general, and the need for a "clear rule" to guide police in that fluid situation, justify *Belton*'s generalization that "it is reasonable to allow officers to ensure their safety and to preserve evidence by searching the entire passenger compartment." *Id*. at 621, 623. As the Court explained, "[e]xperience has shown" that the "*Chimel* principle ha[s] prove[n] difficult to apply in specific cases" and that a rule based on "ad hoc determinations on the part of officers in the field and reviewing courts" was "impracticable" in this context. *Id.* at 620, 623.

Thus, far from leaving open the question, *Belton* and *Thornton* plainly reject the view that each vehicle search incident to arrest must be justified, under the totality of the circumstances of each case, with the demonstrated presence of one of the *Chimel* rationales. Unsurprisingly, then, the lower courts across the country have routinely and virtually unanimously applied *Belton* to situations in which the recent occupant of a car was arrested, handcuffed, and placed in a squad car before

his vehicle was searched.[1] The Arizona Supreme Court erred in reaching the contrary conclusion.

C. A Rule Requiring Proof Of A Threat To Officer Safety Or A Need To Preserve Evidence Under The "Totality Of The Circumstances" Of Each Case Would Obfuscate *Belton*'s Bright-Line Rule

1. The Arizona Supreme Court's decision dissolves the bright-line rule adopted by *Belton*. It would create the same sort of uncertainty from the standpoint of the officer in the field and disarray in the case law that this Court specifically sought to remedy in *Belton* and *Thornton*. See also *Wyoming* v. *Houghton*, 526 U.S. 295, 305-306 (1999) ("When balancing the competing

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[1] See, *e.g.*, *Mapp*, 476 F.3d at 1015, 1017-1019; *Wesley*, 293 F.3d at 545-549 & n.8 (citing cases); *United States* v. *Doward*, 41 F.3d 789, 791 & n.1 (1st Cir. 1994) (citing cases), cert. denied, 514 U.S. 1074 (1995); *United States* v. *Milton*, 52 F.3d 78, 80 (4th Cir.), cert. denied, 516 U.S. 884 (1995); *United States* v. *White*, 871 F.2d 41, 44 (6th Cir. 1989); *United States* v. *Sholola*, 124 F.3d 803, 817-818 & n.15 (7th Cir. 1997) (citing cases); *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.), cert. denied, 519 U.S. 856 (1996); *United States* v. *Karlin*, 852 F.2d 968, 970-971 (7th Cir. 1988), cert. denied, 489 U.S. 1021 (1989); *Hrasky*, 453 F.3d at 1100, 1103; *Conrod* v. *Davis*, 120 F.3d 92, 94 (8th Cir. 1997), cert. denied, 523 U.S. 1081 (1998); *Weaver*, 433 F.3d at 1107; *United States* v. *Osife*, 398 F.3d 1143, 1144, 1146 (9th Cir.), cert. denied, 546 U.S. 934 (2005); *United States* v. *Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *Rainey* v. *Commonwealth*, 197 S.W.3d 89, 91, 95 (Ky. 2006), cert. denied, 127 S. Ct. 1005 (2007); *People* v. *Daverin*, 967 P.2d 629, 631-632 (Colo. 1998); *People* v. *Bailey*, 639 N.E.2d 1278, 1281-1282 (Ill. 1994), cert. denied, 513 U.S. 1157 (1995); *State* v. *Hensel*, 417 N.W.2d 849, 852-853 (N.D. 1988); *State* v. *Stroud*, 720 P.2d 436, 437-438 (Wash. 1986); *State* v. *Fry*, 388 N.W.2d 565, 567, 577 (Wis.), cert. denied, 479 U.S. 989 (1986); see also 3 Wayne R. LaFave, *Search and Seizure* § 7.1(c) at 517 & n.89 (4th ed. 2004) ("[U]nder *Belton* a search of the vehicle is allowed * * * even after the defendant was removed from it, handcuffed, and placed in the squad car.") (citing cases).

interests, our determinations of reasonableness under the Fourth Amendment must take account of * * * practical realities" such as the "bog of litigation * * * in the form of both civil lawsuits and motions to suppress in criminal trials" that would result from a rule that turns on post hoc inquiries into subjective beliefs of individuals or subtle factual distinctions.).

In *Belton*, the Court emphasized the need to provide police officers with a clear, easily administered rule for the dangerous and recurring situation involving the arrest of the recent occupant of a vehicle, 453 U.S. at 458, acknowledging that "practical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence." *Robbins* v. *California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring in judgment). "A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'" *Belton*, 453 U.S. at 458 (citation omitted).

The Arizona Supreme Court's decision reintroduces the very uncertainty and subtlety that *Belton* sought to foreclose. Under the court's decision, the determination whether *Belton* permits the search of an arrestee's car will require an individualized determination of whether, at the time of the search and "based on the totality of the circumstances," the arrest scene has been "secured" to the point that any threats to officer safety or evidence preservation are sufficiently remote that a search is not

justified. J.A. 165-166. That inquiry revitalizes the case-by-case *Chimel* analysis that the Court found unworkable in *Belton*. Returning to that regime would require law enforcement personnel to make a variety of ad hoc determinations—subject to second-guessing by a court—in the limited time that they have to assess the situation after arresting the recent occupant of a vehicle, *Belton*, 453 U.S. at 458, in the manner previously found "impracticable" by this Court. *Thornton*, 541 U.S. at 623.

The uncertainty of such an approach is highlighted by the Arizona Supreme Court's reliance on the "totality of the circumstances" in determining whether "an arrestee is secured." J.A. 165-166. That reliance implicitly recognizes that whether an arrestee is "secured" necessarily is a question of degree. The series of steps that often follow custodial arrests can incrementally reduce the risk that an arrestee will free himself and either harm an officer or destroy evidence. Conducting an initial pat-down, applying handcuffs, performing a full search of the arrestee's person, separating the arrestee from others, placing the arrestee in a patrol car, and, ultimately, detaining the arrestee in a secure holding facility will each undoubtedly reduce such risk. At least in the relatively short period of time while officers remain at the scene of an arrest with the arrestee, however, there is no readily identifiable point at which a scene may reliably be said to be fully secure. Even when law enforcement officers have handcuffed an arrestee and placed him in a patrol car, arrestees occa-

sionally free themselves from their handcuffs, escape, and attempt to harm the officers.[2]

Under the decisions below, determining whether an arrestee is sufficiently "secured" may depend in part on the number of officers on the scene in relation to the number of arrestees, bystanders, or both. The Arizona Supreme Court distinguished this case from *Belton* on that basis, concluding that the lone officer faced "an obvious threat to [his] safety" from the four vehicle occupants in that case. J.A. 158. Of course, the number of officers, arrestees, and bystanders varies from case to case, and also may change during the arrest itself.

Other factors relevant to the "totality of the circumstances" approach affecting the analysis in any particular case would include whether the arrestees are placed in handcuffs or other constraints; whether their hands

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[2] See, *e.g.*, *Mason* v. *United States*, 120 Fed. Appx. 40 (9th Cir. 2005) (suspect handcuffed and locked in back of car kicked out window, escaped, freed hands, and grabbed agent's gun); *Smith* v. *Cupp*, 430 F.3d 766 (6th Cir. 2005) (suspect handcuffed in back of car climbed over seat to front, put car in gear, and attempted to run over officer); *Plakas* v. *Drinski*, 19 F.3d 1143, 1145 (7th Cir.) (suspect handcuffed in backseat of squad car escaped from squad car and later confronted police), cert. denied, 513 U.S. 820 (1994); *United States* v. *Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir.) (citing incidents in which police officers were slain by handcuffed arrestees), cert. denied, 510 U.S. 955 (1993); see also Americans for Effective Law Enforcement Amicus Br. 11-12 (citing cases); *Doward*, 41 F.3d at 793 n.5 (discussing "the unpredictable developments ultimately confronting" police in *Belton* context, including the possibility that bystanders or unknown confederates in the area may approach the vehicle); *id.* at 791-793 & n.1; *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at *1 (N.D. Tex. May 19, 2003) (arrestee who was handcuffed and secured with a seatbelt in a locked patrol car "suddenly and without warning * * * slipped out of his handcuffs, released the seat belt latch, opened the locked car door, and tried to escape from custody").

are cuffed behind or in front; the relative (and changing) locations of the officers, arrestees, bystanders, and the car; whether the arrestees are placed in patrol cars, where those cars are located, whether they are equipped with a prisoner cage, whether their doors or windows are open; and whether the officers monitor the cars during the search. The inquiry would also depend on the size, strength, criminal history, and other characteristics of the arrestees and bystanders, as well as whether the arrestees act nervous, agitated, compliant, or hostile or whether the arrestee poses a greater than average risk of escaping restraints (with large wrists and small hands). The time of day or night might also be relevant, along with the relative density of the area and dangerousness of the neighborhood. The possibility of a confederate's late arrival would also have to be factored in. Officers would be required to make on-the-spot judgments as to these and numerous other factors to determine whether the scene is sufficiently "secure" to preclude a vehicle search. The need to monitor the changing dynamics of the arrest scene would eliminate the simplicity and predictability on which *Belton* predicated its bright-line rule and would mark a return to the uncertain and hazardous world that existed for officers in the field before *Belton*. See 453 U.S. at 459.

2. The Arizona Supreme Court suggested that applying *Belton*'s bright-line rule without a case-specific determination of whether the *Chimel* rationales were present would cut the search-incident-to-arrest doctrine adrift from its traditional "constitutional moorings" as set forth in *Chimel*. J.A. 163-164. Although this Court has found that most Fourth Amendment situations are not amenable to bright-line rules, see *United States* v. *Drayton*, 536 U.S. 194, 201 (2002), it has traditionally

developed clear, per se rules in cases where such a rule would provide meaningful protection to officers in hazardous situations without unduly infringing on citizens' privacy. For example, in *Robinson*, as discussed above, the Court announced a per se rule authorizing a search incident to arrest of the arrestee's person, regardless of whether the person posed any threat to the officer in a particular situation. See 414 U.S. at 235.

Similarly, in *Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977) (per curiam), the Court held that police officers executing a traffic stop may order the driver to exit the vehicle, regardless of whether the officer has any reason to suspect that the driver threatens his safety. See *id*. at 110-111. The Court explained that this per se rule was justified by the government's "legitimate and weighty" concerns for officer safety and the relatively slight intrusion on the driver's liberty or privacy. *Ibid.* Later, in *Maryland* v. *Wilson*, 519 U.S. 408 (1997), the Court extended *Mimms* to passengers of a stopped car. The Court rejected the respondent's contention that a bright-line rule was unwarranted because it would allow officers to detain passengers even when they posed no reasonable risk to officer safety, which was the only rationale justifying the seizure. *Id*. at 413 n.1. Instead, the Court concluded that the danger to officers arising from traffic stops in general justifies a per se rule allowing the police to order passengers out of the vehicle, regardless of whether those passengers pose a reasonable risk to the officers in the particular case. *Id*. at 413-414.

This Court has also adopted a bright-line rule authorizing police, when executing a search warrant, to detain any occupants of the premises being searched, without requiring a case-by-case analysis of whether those occu-

pants pose a risk in each individual case. *Michigan* v. *Summers*, 452 U.S. 692 (1981). The Court again concluded that the generally dangerous situation of executing a search warrant justifies the intrusion, even where there is no reason to believe that the bystanders threaten the officers' safety. See *id.* at 702-703 ("Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence."). Accordingly, the Court concluded that "the risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Ibid.*

All of these per se rules are overinclusive in the sense that they allow officers to take actions to protect themselves in situations that are potentially dangerous as a general matter, even though in many (if not most) particular instances, there may be no readily identifiable threat to officer safety. But the magnitude of the interest being protected—officer safety—and the difficulty of isolating (before the fact) *only* true threats justifies broader authority under the Fourth Amendment.

3. A bright-line rule is appropriate in the *Belton* context. As this Court has repeatedly held, custodial arrests in general are dangerous and fluid situations giving rise to concerns for officer safety and preservation of evidence. See *Thornton*, 541 U.S. at 621; *Robinson*, 414 U.S. at 234 n.5. Indeed, much of the risk inherent to such arrests results from the *uncertainty* that an officer must confront in situations where the officer often may lack knowledge of factors increasing his risk of harm. Thus, while an officer must have probable cause to arrest an individual, the unknown characteristics of that

individual and the surrounding environment warrant a bright-line rule that sufficiently protects officers in the field while executing custodial arrests.

The balance of constitutional interests strongly favors *Belton*'s clear and workable rule for vehicle searches incident to arrest. As noted, officer safety, evidence preservation, and the practical need for an easily administrable rule in this frequently recurring factual context weigh heavily in favor of permitting vehicle searches contemporaneous to the arrest of a recent occupant of the vehicle.

Furthermore, an arrestee's expectation of privacy in his automobile's passenger compartment, while not insignificant, is "limited." *Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment). Because automobiles necessarily travel through public thoroughfares in plain view, are pervasively regulated by states, "periodically undergo official inspection," and are "often taken into police custody in the interests of public safety," individuals have only a diminished expectation of privacy in a vehicle's passenger compartment. *Chadwick*, 433 U.S. at 12-13; see *Houghton*, 526 U.S. at 303. That privacy interest is "diminished further when the occupants are placed under custodial arrest." *Robbins*, 453 U.S. at 431 (Powell, J., concurring in judgment); cf. *United States* v. *Edwards*, 415 U.S. 800, 808-809 (1974) ("While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.") (citation omitted). Indeed, an individual's expectation of privacy concerning the passenger compartment of a vehicle is reduced even further by the fact that, in many instances, the Fourth

Amendment permits police to impound such vehicles and to inventory their contents. See *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976); *Cooper* v. *California*, 386 U.S. 58 (1967). Thus, as Justice Powell explained, "*Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence," and the "balance of these interests strongly favors the Court's rule." *Robbins*, 453 U.S. at 431.

D. The *Belton* Doctrine Is Straightforward And Workable

1. The Arizona Supreme Court's abandonment of *Belton*'s bright-line approach to vehicle searches was animated in part by its concern that the demonstrated presence of the *Chimel* rationales in each case was necessary to provide needed limits to the *Belton* rule. See J.A. 158-159. That concern is unfounded because *Belton* has built-in limitations that have proven to be clear, workable, and sound in the mine run of cases.

First, *Belton* applies only when the arrestee is the vehicle's "recent occupant." 453 U.S. at 460; *Thornton*, 541 U.S. at 622. When the police confront and arrest the individual while he is in the car or right after he exits the car, it is clear that *Belton* applies. See *id.* at 623-624 ("So long as an arrestee is the sort of 'recent occupant' of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest."). Although, as the lower courts have recognized, there comes a point at which the suspect can no longer be reasonably regarded as a "recent occupant" of the vehicle because of a significant lapse of time or distance from the arrestee's point of departure from his car, that difficulty does not arise in most searches incident to arrest where

the arrest and search occur as part of a short and uninterrupted series of events.[3] Moreover, time and distance—unlike relative security—are at least susceptible to objective measurement and therefore an administrable test.

Second, *Belton* requires that the search of the vehicle be undertaken as "a contemporaneous incident of th[e] arrest." 453 U.S. at 460. A search generally meets the contemporaneous-incident standard if it is an "integral part of a lawful custodial arrest process," such that the search and arrest are fairly regarded as "one continuous event." *Abdul-Saboor*, 85 F.3d at 668-669 (citation omitted). Contrary to the suggestion of the Arizona Supreme Court (J.A. 158-159), the determination of whether a vehicle search is a "contemporaneous incident" to an arrest is straightforward and workable, and it sensibly limits *Belton* searches to instances where the search is genuinely part of the arrest process. Accordingly, most courts have correctly concluded that *Belton* does not authorize the search of a vehicle if the arrestee or his vehicle has been removed from the scene before the search is conducted, or if the search has not been conducted within a reasonable time of the arrest. See, *e.g.*, *United States* v. *Wells*, 347 F.3d 280, 287 (8th Cir. 2003), cert. denied, 541 U.S. 1081 (2004); *United States* v.

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[3] See, *e.g.*, *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (*Belton* does not apply where arrestee was "approximately thirty feet from his vehicle when arrested"); *Dean*, 76 P.3d at 437 (arrestee was not "recent occupant" under *Belton* where "[h]e had not occupied the vehicle for some two and one-half hours," and was found hiding in the attic of a nearby house); *State* v. *Porter*, 6 P.3d 1245, 1249 (Wash. Ct. App. 2000) (*Belton* does not apply where individual was arrested 300 feet from vehicle).

Lugo, 978 F.2d 631, 634-635 (10th Cir. 1992); *Hrasky*, 453 F.3d at 1102-1103.

2. In an opinion concurring in the judgment in *Thornton*, Justice Scalia proposed an additional limiting principle to govern the *Belton* rule. See 541 U.S. at 625-632. Believing that the typical *Belton* search occurs only after the suspect is secure, *id.* at 625-629, Justice Scalia suggested narrowing *Belton* to vehicle searches conducted when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Id*. at 632.

That alternative rule is unwarranted. If there are reasonable grounds to believe that a vehicle contains evidence of a crime, a warrantless search of that car would be based on probable cause, see *Houghton*, 526 U.S. at 302; *Ornelas* v. *United States*, 517 U.S. 690 (1996), and, thus, would be lawful under the automobile exception to the warrant requirement. See *Maryland* v. *Dyson*, 527 U.S. 465, 466-467 (1999) (per curiam); *Houghton*, 526 U.S. at 300-301. The proposed restriction on *Belton*, thus, is effectively subsumed within distinct Fourth Amendment doctrines. As such, it would serve no independent purpose and would risk substantial doctrinal confusion among the lower courts.[4]

Moreover, recasting *Belton* as based upon police interest in gathering evidence related to the crime of ar-

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[4] The "reasonable to believe" formulation suggested by Justice Scalia presumably refers to probable cause and not a novel standard between probable cause and reasonable suspicion. This Court has properly rejected the invitation to create such a "third verbal standard" because creating new and "subtle verbal graduations may obscure rather than elucidate the meaning" of the "constitutional requirement of reasonableness." *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 541 (1985).

rest would create irreconcilable tension with the logic of *Belton*'s current limitations. If the reasonable belief that evidence will be found, combined with the arrestee's diminished expectation of privacy in the automobile context, justifies a warrantless search of the car, it is not clear why the doctrine should be limited to situations where the arrestee was a recent occupant of the vehicle and the search was contemporaneous with the arrest. The new rationale would also seem to justify a search of the trunk, as well as the passenger compartment and containers within. Nor is it clear why the limitation to evidence of the crime of the arrest makes any sense. Unless one entirely accepts that no appreciable risk of destruction of evidence exists in a typical *Belton* search, cf. *Thornton*, 541 U.S. at 625-629 (Scalia, J., concurring in the judgment), the temptation to destroy evidence presumably will be just as great in the case of evidence of a crime more serious than the crime of arrest. Thus, transforming *Belton* along the lines suggested would create confusion both in actual practice and in the underlying logic of *Belton* searches.

Finally, recharacterizing *Belton* in the manner suggested by Justice Scalia's *Thornton* concurrence cannot be squared with the rationale of *Belton* itself. Justice Stevens concurred in the judgment in *Belton* because he would have held that the "automobile exception" to the warrant requirement authorized the search because the officers had "probable cause to believe the vehicle[] contained contraband." *Robbins*, 453 U.S. at 444, 449-452 & n.13 (Stevens, J., dissenting); see *Belton*, 453 U.S. at 463 (Stevens, J., concurring in the judgment) (adopting rationale in *Robbins* dissent). But the State in *Belton* never argued that the vehicle search was lawful on that ground, *Robbins*, 453 U.S. at 452 n.15 (Stevens, J., dis-

senting), and *Belton* made clear that its holding did not rest on the automobile exception, which "proceeds on a theory wholly different from that justifying [a] search incident to an arrest" and is "not dependent on the right to arrest," *Chambers* v. *Maroney*, 399 U.S. 42, 49 (1970) (quoting *Carroll* v. *United States*, 267 U.S. 132, 158 (1925)). See *Belton*, 453 U.S. at 462 n.6 (citing *Chambers*); see also *id.* at 463 (Rehnquist, J., concurring) (concurring "because the Court does not find it necessary to consider the 'automobile exception' in its disposition"); *id.* at 472 (White, J., dissenting) (*Belton* authorizes searches without "probable cause to believe that contraband or evidence of crime will be found"). Rather than recast *Belton* as a rule about evidence-seeking searches, the Court should reaffirm that *Belton* rests on the traditional justifications of the search-incident-to-arrest doctrine—officer safety and evidence preservation—in the recurring context of vehicle searches following the arrest of a recent occupant.

CONCLUSION

The judgment of the Supreme Court of Arizona should be reversed.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General

ALICE S. FISHER
Assistant Attorney General

MICHAEL R. DREEBEN
Deputy Solicitor General

ANTHONY A. YANG
Assistant to the Solicitor General

JOSEPH F. PALMER
Attorney

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